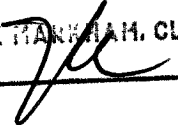


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SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA  
2011 AUG 16 PM 4:29 ✓  
SANDRA K. HANNAH, CLERK  
BY: 

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

CAUSE NO. P1300CR201001325

STATE'S RESPONSE TO MOTION  
FOR SEVERANCE

Assigned to Hon. Warren R. Darrow  
Division PTB

The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and her deputy undersigned responds to Defendant's Motion to Sever Counts III through X from the Indictment Pursuant to Rule 13.4. This response is supported by the following memorandum of points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Facts Pertinent to this Motion

**A. Count III Fraud Schemes-Virginia Carol Kennedy Testamentary Trust**

Carol Kennedy was murdered on July 2, 2008. At the time of her death, her life was insured by two (2) Hartford Life insurance policies having a face value of \$750,000.00. On each life insurance policy, the Defendant, Steven DeMocker (hereinafter "Defendant") was the beneficiary.

On August 8, 2008, a "Petition for Formal Probate of Will; Appointment of Personal Representative; and Replacement of Trustee of Testamentary Trust" was filed in Yavapai

1 Superior Court No PB 2008-0202. Subsequently, the Court appointed Katherine ("Katie")  
2 DeMocker Personal Representative of the Kennedy Probate Estate and Trustee of the Kennedy  
3 Testamentary Trust.

4 On August 20, 2008, Defendant filed a death benefits claim on both policies with Hartford  
5 Insurance Company (hereafter "Hartford"). Hartford denied Defendant's claims on August 27,  
6 October 1, November 21 and December 16, 2008 and on January 15, 2009 because the Defendant  
7 was a murder suspect. On October 23, 2008 Defendant was arrested and indicted for first degree  
8 murder and burglary in the death of Carol Kennedy. The Defendant has been in the custody of the  
9 Yavapai County Jail since his arrest.

10 On March 3, 2009, disclaimers of all rights in the two life insurance policies were  
11 executed by Defendant. On March 24, 2009, Defendant signed a disclaimer of all rights under the  
12 Last Will and Testament of Carol Kennedy. With the disclaimers in hand, the Hartford Insurance  
13 Company settled the life insurance claims and issued a check to the Estate of Virginia Carol  
14 Kennedy and a check to the Kennedy Testamentary Trust totaling \$770,491.69 dollars.  
15 Defendant was now in a position to control the insurance proceeds.

16 In a telephone conversation on March 17, 2009, Defendant informed his daughter Katie:

17 "... these are resources that uhm you know for reasons you understand  
18 need to be set aside under your control for now but that this is, these are resources  
19 I have to be pretty sure I you know I'm in, that **I am gonna make the decisions  
20 about how they're deployed.**"

21 After Katie DeMocker said she wanted to make sure that Charlotte DeMocker goes to  
22 college, Defendant's true intent came out:

23 "I understand your concern but that, that is, that is unfortunately at this  
24 point, that **has to be down the scale of priorities below bond first, defense  
25 second.** . . But we may need every penny of it for defense and I need to make  
26 certain that you understand that there **will be no impediment** to that if that's what  
we need."

*Yavapai County Jail call on March 17, 2009 at 10 39 a m*

On May 9, 2009 Defendant told Renee Girard his attorneys have agreed to cap the  
attorney's fees. On August 17, 2009, Katie DeMocker withdrew \$354,737.54 from the  
Testamentary Trust account and deposited that amount into her personal bank account.

1 According to Defendant's plan on August 27, 2009, Katie DeMocker wire transferred  
2 \$350,000 from her personal account to Janice DeMocker, mother of Defendant. By August 28,  
3 2009, Janice DeMocker had wired \$250,000.00 to the Osborn Maledon law firm and \$100,000.00  
4 to John Sears.

5 On August 17, 2009, due to increasing pressure from Defendant, Katie DeMocker  
6 resigned as Trustee of the Testamentary Trust and accepted the appointment of Renee Girard, as  
7 successor Trustee. On August 28, 2009, Renee Girard signed her acceptance as Trustee of the  
8 Testamentary Trust.

9 On October 19, 2009, Defendant asked Ms. Girard: "Do you feel like moving three  
10 hundred and fifty thousand around today?" The Defendant then directed Renee Girard to  
11 transfer an additional \$350,000.00 from the Testamentary Trust account to Defendant's joint  
12 bank account with Charlotte DeMocker at Bank of America. This transfer occurred that same  
13 date. *Yavapai County Jail call on October 19, 2009 at 9.12 a m*

14 On October 23, 2009, a wire transfer in the amount of \$350,000.00 was made from  
15 Charlotte and Defendant's joint account to the account of Janice DeMocker. On October 27,  
16 2009, Janice DeMocker made out two personal checks. The first was in the amount of \$100,000.00  
17 payable to John Sears. The second was in the amount of \$250,000.00 dollars and made payable to  
18 Osborn and Maledon.

19 From August, 2008 through October, 2009 the Defendant planned and benefited from the  
20 Hartford Insurance Company insurance proceeds to the peril and detriment of the Kennedy  
21 Testamentary Trust. The Defendant achieved his motive for the killing of Carol Kennedy.

22 ***B. Counts IV through X-Voice in the Vent and Anonymous Email***

23 The Defendant disclosed to Mr. Sears the voice in the vent event several weeks before Mr.  
24 Sears received the anonymous email in June of 2009. The timing of disclosure on both events was  
25 orchestrated by the Defendant. On July 21, 2009, Defendant Steve DeMocker and John Sears met  
26 with representatives of the Yavapai County Attorney's Office. The purpose for this meeting was  
to present evidence supporting Defendant's third party culpability defense to the murder charge.

On May 25, 2010 the State filed a motion in limine to preclude the Defendant from admitting  
the June 2009 anonymous email. On June 3, 2010, Mr. Sears argued strenuously for the  
admissibility of the anonymous email and persuaded the Court to deny the State's motion. The  
anonymous email and voice in the vent were now evidence in the murder trial.

1 When it was discovered that the Defendant authored the anonymous email and then used his  
2 minor daughter Charlotte DeMocker and his girlfriend Renee Girard to send it anonymously and that  
3 he fabricated the voice in the vent, the entire defense team was forced to withdraw for ethical reasons  
4 causing a mistrial.

5 **II. Issue**

6 The issue before this Court is whether or not the following charges: Count I, First Degree  
7 Murder and Count II, Armed Burglary should be severed from the seven other charges for trial  
8 purposes. The seven charges are: (1) Count III, Fraud Schemes- Kennedy Testamentary Trust;  
9 (2) Count IV, Fraud Schemes for the anonymous email and voice in the vent; (3) Count V,  
10 Conspiracy to commit Fraud Scheme pertaining for the email and voice in the vent; (4) Counts VI  
11 and VII, Forgery for the anonymous email and voice in the vent; (5) Count VIII, Fraud Schemes  
12 against Yavapai Superior Court, (6) Count IX, Tampering with evidence; and (7) Count X,  
13 Contributing to the Delinquency of a Minor.

14 **III. Law and Analysis**

15 The Defendant's effort to lead this Court down a Rule 404(b) analysis is without legal  
16 merit.

17 The text of Rule 404(b) states:

18 "(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not  
19 admissible to prove the character of a person in order to show that he acted in conformity  
20 therewith. *It may, however, be admissible for other purposes, such as proof of motive,*  
21 *opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or*  
22 *accident.*" Emphasis added.

23 The general rule is that evidence of other crimes or bad acts is not admissible to prove the  
24 defendant committed the crime charged. See *State v. Correll*, 148 Ariz. 468, 715 P.2d 721 (1986).  
25 The rationale is that if bad acts are admitted to show defendant is a bad man, the jury may convict  
26 on lesser evidence. *State v. Swinburne*, 116 Ariz. 403, 569 P.2d 833 (1977); *State v. Babineaux*,  
22 Ariz.App. 332, 526 P.2d. 1277 (App.Div.1 1974).

1 There are four main provisions of the Arizona Rules of Evidence that determine when  
2 other act evidence will be permitted:

- 3 1. Rule 404(b) requires that it be for a proper purpose-in this case to prove the elements of  
4 a criminal charge;
- 5 2. Rule 402 requires that it be relevant to the charge at issue- in this case to prove the  
6 elements of a criminal charge;
- 7 3. Rule 403 requires that prejudicial nature not outweigh its probative value- in this case  
8 to prove the elements of a criminal charge;
- 9 4. Rule 105 requires that the judge give a limiting instruction upon request.

See *State v. Coghill*, 216 Ariz. 578, 169 P.3d 942 (App. 2007).

10 There are numerous exceptions to the rule and one of the most obvious is where the bad  
11 act is an element of the crime charged, such as the author of forged instruments, fraud schemes  
12 and conspiracy to prove crimes charged besides murder. *State v. Via*, 146 Ariz. 108, 704 P.2d  
13 238 (1985) cert. denied, 106 S.Ct. 1268 (1986). See also *State v. Rosthenhausler*, 147 Ariz. 486,  
14 711 P.2d 625 (App.Div.2 1985) (seizure of illegal shotgun explained why handgun used in later  
15 robberies).

16 Arizona Rules of Evidence Rule 404(b) codifies many of the exceptions with which this  
17 section is concerned. Rule 404(b) is an inclusionary rule that admits evidence of bad acts relevant  
18 under Rule 401, except where it tends to prove only criminal disposition. *United States v. Young*,  
19 573 F.2d 1137 (9th Cir. 1978); *United States v. Rocha*, 553 F.2d 615 (9th Cir. 1977); *State v.*  
20 *Passarelli*, 130 Ariz. 360, 636 P.2d 138 (App.Div.2 1981). Many of the other bad act exceptions  
21 fit more than one category. Evidence admissible to complete the story may also reveal motive.  
22 *State v. Collins*, 111 Ariz. 303, 528 P.2d 829 (1974).

23 Counts III through X, charge the Defendant with fraud schemes, conspiracy, forgery times  
24 two, tampering and contributing to the delinquency of a minor. The alleged crimes are connected  
25 directly to the murder charge even though they arose afterward. The State has alleged Defendant's  
26 motive in the killing was to benefit from the life insurance policies. Defendant's motive behind the  
voice in the vent and the anonymous email events were to get the murder charge dropped, or to get  
his bond reduced or to be a defense to the charges.

1 Motive, although not an element of the crime, has relevancy in the determination of the  
2 Defendant's guilt. Motive supplies the reason that nudges the will and prods the mind to indulge  
3 the criminal intent. Evidence of other crimes is relevant to show that the Defendant has a reason  
4 for having the requisite state of mind to do the act charged. This evidence may in turn serve as  
5 the identity of the person who committed the crime, or of deliberateness, malice or a specific  
6 intent constituting an element of the crime.

7 Joinder of offenses in a single trial is appropriate where the offenses arose out of a series  
8 of connected acts, and the offenses are proved by much of the same evidence. *State v. Comer*,  
9 165 Ariz. 413, 418, 799 P.2d 333, 338 (1990), cert. denied, 499 U.S. 943, 111 S. Ct. 1404, 113  
10 L.Ed.2d 460 (1991). Where evidence of one offense is entwined with evidence of the other  
11 offenses, the offenses are properly joined. *State v. Gretzler*, 126 Ariz. 60, 73, 612 P.2d 1023,  
12 1036 (1980). If evidence of one charge is admissible in regard to other charges, it is not an abuse  
13 of discretion to try the charges together. *State v. Bravo*, 171 Ariz. 132, 829 P.2d 322 (App.  
14 1991); *State v. Stein*, 153 Ariz. 235, 735 P.2d 845 (App. 1987). Where, because of the link  
15 between two crimes, evidence admissible to prove one is also admissible to prove the other, the  
16 crimes are properly consolidated. *State v. Williams*, 183 Ariz. 368, 904 P.2d 437 (1995).

17 In *State v. Martinez-Villareal*, 145 Ariz. 441, 445, 702 P.2d 670, 675 (1985) the Arizona  
18 Supreme Court found that two murder charges were properly joined with a burglary charge where  
19 the murder weapon came from the burglary. In that case the Court stated generally, joinder of  
20 offenses is permitted when they are "based on the same conduct or are otherwise connected  
21 together in their commission[.]" Rule 13.3(a)(2), Arizona Rules of Criminal Procedure.

22 The Court further found that the joinder did not confuse the issues, because "[t]he jury  
23 was properly instructed to consider each offense separately, and they were advised that the state  
24 had to prove an offense beyond a reasonable doubt before a conviction could occur." *Martinez-*  
25 *Villareal* at 446.

26 The Defendant is a suspect in the murder and armed burglary of Kennedy. The State has  
alleged Defendant's motive in this murder was financial. The Defendant never took his eye off of  
the three-quarters of a million dollars when he murdered Ms. Kennedy which connects Count III  
to the murder charge in Count I.

The evidence shows the Defendant, in numerous recorded jail conversations expressed  
ownership and control over the Hartford Insurance proceeds immediately after the murder until

1 the funds were used to pay his defense fees. The disclaimers executed by the Defendant were a  
2 ruse to get the monies paid into the Estate account so the Defendant could control the monies.

3 The Defendant instructed his daughter Katie DeMocker in a heated jail conversation "that  
4 I am gonna make the decisions about how they're deployed." After Katie paid out the first half of  
5 the insurance monies she resigned as Trustee. Defendant replaced Katie with his girl friend as  
6 Successor Trustee. Eventually the Defendant's control over the insurance proceeds overcame the  
7 will of decedent Virginia Carol Kennedy. The Defendant manipulated all of the cash out of the  
8 Kennedy Testamentary Trust and directly benefited by using them to pay his attorney fees. The  
9 financial motive preceded the murder and continued until Defendant's goal of benefiting from the  
10 money occurred.

11 The Defendant "created" the voice in the vent which is similar but not exactly the same as  
12 the anonymous email story. The Defendant intended the voice in the vent to corroborate the  
13 anonymous email story. Theses stories were created by the Defendant and he stated in recorded  
14 jail conversations they were intended to either get the State to drop the charges, be used to reduce  
15 his bond or to be used as a defense in the first trial. According to Defendant's previous counsel,  
16 the author of the anonymous email was written by someone who was at the murder scene. This  
17 evidence is inextricably intertwined and ties the Defendant to the staged murder scene. This  
18 circumstantial evidence will prove that Defendant's motive in murdering Carol Kennedy was for  
19 the insurance money and to avoid paying monthly spousal maintenance.

20 A further consideration by the court is the promotion of judicial economy. Any prejudice  
21 that a defendant claims he will suffer if these charges are not severed for trial must be balanced  
22 against the countervailing considerations of judicial economy. *State v. Mauro*, 149 Ariz. 24, 27,  
23 716 P.2d 393, 396 (1986), *reversed on other grounds*, 481 U.S. 520 (1987); *State v. Via*, 146  
24 Ariz. 108, 115, 704 P.2d 238, 245 (1985). A defendant cannot resist consolidation simply on the  
25 ground that proof of guilt on one charge will make the trier of fact more likely to find guilt on the  
26 other charge. *Anderson v. State*, 155 Ariz. 289, 290, 746 P.2d 30, 31 (App. 1987). When multiple  
counts are tried together, "a defendant is not prejudiced if the jury is (1) instructed to consider  
each offense separately, and (2) is advised that each offense must be proven beyond a reasonable  
doubt." *State v. Atwood*, 171 Ariz. 576, 630, 832 P.2d 593, 647 (1992) (disapproved on other  
grounds by *State v. Nordstrom*, 200 Ariz. 229, 25 P.3d 717 (2001)). Accord, *State v. Comer*, 165  
Ariz. 413, 419, 799 P.2d 333, 339 (1990); *State v. Martinez-Villareal*, 145 Ariz. 441, 446, 702

1 P.2d 670, 675 (1985), *State v. Lee*, 189 Ariz. 590, 600, 944 P.2d 1204, 1214 (1997).

2 As the Arizona Supreme Court stated in the context of jointly trying defendants, "... in the  
3 interest of judicial economy, joint trials are the rule rather than the exception." *State v. Murray*,  
4 184 Ariz. 9, 25, 906 P.2d 542, 558 (1995), *see also State v. VanWinkle*, 186 Ariz. 336, 339, 922  
5 P.2d 301, 304 (1996).

6 It is clear that separate trials as requested by Defendant would require virtually the same  
7 rendition of evidence and would needlessly expend judicial resources as well as the parties'  
8 resources.

9 Defendant also asserts that the indictment must allege that all offenses are "part of a  
10 common scheme or plan." However, in *State v. Via*, 146 Ariz. 108, 704 P.2d 238 (1985), cert.  
11 denied, 475 U.S. 1048, 106 S.Ct. 1268, 89 L.Ed.2d 577 (1986) the Arizona Supreme Court off-  
12 handedly dismissed such requirement. In that case the Court considered whether the trial court  
13 erred in refusing to grant a motion to sever the trial of the counts charging murder and robbery  
14 from those charging fraud and theft. It noted that the counts against defendant were properly  
15 joined in a single indictment and stated, "Although the state failed to allege that offenses were  
16 part of a common scheme or plan, such an explicit allegation is not required." *Id.* at 115.

17 **IV. Conclusion**

18 Severance of the charges for trial purposes is not appropriate. Therefore, the State  
19 respectfully requests that the Court deny Defendant's Motion.

20 **RESPECTFULLY SUBMITTED** this 16<sup>th</sup> day of August, 2011.

21 **Sheila Sullivan Polk**  
22 **YAVAPAI COUNTY ATTORNEY**

23 By: Jeffrey G. Papore  
24 **Jeffrey G. Papore**  
25 **Deputy County Attorney**

26 **COPY** of the foregoing **Emailed** this  
27 16<sup>th</sup> day of August, 2011, to:

28 Honorable Warren R. Darrow  
29 Division PTB  
30 Yavapai County Superior Court  
31 Via email to Diane Troxell: [DTroxell@courts.az.gov](mailto:DTroxell@courts.az.gov)



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